

Remarks

Claims 21-25 and 34-42 were the subject of the office action dated August 24, 2007. These claims are again presented for further consideration. A set of re-ordered claims with the above changes processed is also attached to facilitate examination.

The applicants wish to thank the examiner for withdrawing the rejection for lack of an adequate written description.

The applicants also wish to thank the examiner for her suggestion on page 4 of the office action to recite combinations of named proteins. The applicants appreciate that the patent office has limited abilities to search multiple sequences in a single application. However, this invention relates to certain combinations of known sequences. Thus, the extra efforts by the examiners are appreciated in this case.

The applicants maintain their prior arguments that the claims as previously presented were fully enabled. However, the enablement rejection should now be rendered moot. Claim 21 now specifies that the Proteins consist essentially of certain amino acid sequences. Claim 34 now specifies 99% identity. Basis for this can be found in paragraph 188, for example, of the specification. Clearly, one skilled in the art would expect that some changes in the specified amino acid sequences would be tolerated. This is discussed at length in prior responses, as indicated by statements regarding the ordinary skill in the art as provided in the Written Description Guidelines, for example. The applicants also state this in their specification, which should have the effect of an attestation by all of these skilled scientists. See paragraphs 188 and 190, for example, of the specification. Claim 36 now specifies that any changes are conservative amino acid changes. Basis for this can be found in paragraph 190, for example, of the specification.

In light of the foregoing, the withdrawal of the rejection for lack of enablement is respectfully requested.

Independent claims 21, 34, and 36 clearly read on the sequences selected for examination purposes. The applicants believe that any sequences specifically removed from the claims were treated as non-elected inventions by the examiner, and that such sequences can be specified in claims in one or more divisional applications.

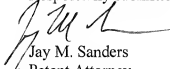
Claim 21 specifies that both potentiators are *Photorhabdus*-derived proteins (including all three of the elected sequences). The applicants crafted claims 34 and 36 so as to specify elected sequences but to not exclude situations where the Toxin A is a *Xenorhabdus*-derived toxin and where one of the B or C potentiators is also a *Xenorhabdus*-derived protein. For these claims, a point of novelty is the combination of the *Xeno* toxin combined with a *Photorhabdus*-derived potentiator (either B or C). Claims 38 and 39 specify non-elected sequences, but this should hopefully not present a problem, as other novel combinations of elected sequences are specified in the claims from which these two claims depend.

Regarding the provisional, obviousness-type double patenting rejection, the applicants note that this was the first-filed application. In addition, the applicants submit that the subject matter of the cited USSN 11/070,573 claims would not have been obvious in view of the subject claims. As discussed in that later-filed application, for example, one skilled in the art had no prior expectation that such fusion proteins would be functional. It was with surprise that those fusion proteins were found to be active. Questions certainly existed as to whether those proteins would be functional. For example, would such fusions be properly produced and processed so as to result in active toxin complexes? Such questions were not answered until that later invention was made. In light of the foregoing, the applicants request the withdrawal of the double patenting rejection. If there are additional related issues that the examiner would like addressed, the applicants can give further consideration to such issues (and whether filing a terminal disclaimer in the subject case would be warranted) upon an indication that the subject application is otherwise allowable.

The Assistant Commissioner is hereby authorized to charge any fees under 37 CFR §§1.16 and 1.17 as required by this paper to Deposit Account 19-0065.

The applicants invite the Examiner to call the undersigned if clarification is needed on any of this response, or if the Examiner believes a telephonic interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,



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Attachments: Request for Continued Examination
Re-ordered claims with changes processed